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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044697
Party	Plaintiff ACM ENTERPRISES, INC.
Correspondence Address	DAVID HONG Law Office of David Hong P.O. Box 2111 Santa Clarita, CA 91386-2111 UNITED STATES david.hong@dhpattentlaw.com
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Signature	/david hong, reg #45704/
Date	04/21/2006
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES (TBMP
523) AND TO TEST SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST
(TBMP 524)

Pursuant to Federal Rules of Civil Procedure 26 and 37, 37 CFR 2.120 of the Trademark Rules of Practice, and TMBP 523-524, Petitioner ACM ENTERPRISES, INC. ("Petitioner") respectfully moves the Board for an order (1) compelling Respondent JEANNETTE MARTELLO ("Respondent") to further respond to Petitioner's Second Set of Interrogatories and Petitioner's Second Requests for the Production of Documents and (2) to test the sufficiency of the Respondent's Response to the Second Set of Requests for Admissions. See also Declaration of David Hong and Exhibits A-E for this motion.

Such an order is appropriate because Respondent has failed to completely and to adequately respond to Petitioner's Interrogatories and Document Requests served on Feb. 22, 2006. Counsel for Petitioner has made repeated good faith efforts to resolve the issues with Respondent but, to date, such efforts have been unsuccessful.

PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES (TBMP 523) AND TO TEST
SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST (TBMP 524)

Cancellation No. 92044697

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I. BACKGROUND

On July 1, 2005, Petitioner filed a Petition for Cancellation against Respondent's U.S. Registration No. 2932593 (Serial No. 76581387, filed March 15, 2004), for the mark "SKIN DEEP" in class 044 for medical services; healthspa services, namely cosmetic body care services; cosmetician services; physician services; Respondent has claimed first use in commerce on Feb. 28, 2004 and first use anywhere on April 20, 2002 in her application. This mark was registered on the Principal Register on March 15, 2005.

Petitioner asserts that it has extensively used and promoted the SKIN DEEP marks in the United States since at least as early as Feb. 28, 2004 and prior to the filing date of Respondent's application.

As grounds for Cancellation, Petitioner alleges priority of use and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d); in addition, Petitioner also alleges that (1) Respondent did not use the mark "Skin Deep" in commerce as listed on its trademark application (Serial No. 76581387); (2) Respondent did not use the mark "Skin Deep" prior to Application or Registration; (3) Respondent's registration for "Skin Deep" was obtained fraudulently in that the Respondent failed to use the mark in commerce as applied in the following applications:

1. U.S. Serial No. 76581387 for the mark "SKIN DEEP" in class 044.
2. U.S. Serial No. 76579565 for "Skin Deep Laser MEDSPA" in class 044.
3. U.S. Serial No. 76581391 for "Skin Deep Laser" in class 044.

(See 7-1-2005 Petition for Cancellation. ¶¶5-13).

On July 6, 2006, the Board instituted this proceeding and set discovery to open on July 26, 2005, and to close on Jan. 22, 2006. On Dec. 30, 2005, the Board allowed the parties stipulated motion to extend the discovery period to Feb. 22, 2006 and the associated trial testimony periods.

On Feb. 22, 2006, Petitioner served the Respondent with Petitioner's Second Request for the Production of Documents, Second Set of Interrogatories, and Second Request for Admissions to Respondent. (Copies of these Three Requests are attached as Exhibit A.)

Responses to Petitioner's discovery requests were due in 30 days or by March 24, 2006; Petitioner granted two extensions on March 23, 2006 (2-week ext.) and also on April 6, 2006 (1-week ext.), which totaled three additional weeks to a new deadline of April 14, 2006.

Respondent's counsel Ms. Michelle DeCasas, Esq. telephoned Petitioner's counsel David Hong on April 14, 2006 to request a third extension to respond; Ms. DeCasas stated that due to the third party Ms. Sara Herrick's illness, Respondent was yet not able to obtain the requested information and documents from Ms. Herrick.

Considering the already granted three weeks to respond, Petitioner declined to grant another extension of time. Respondent informed Petitioner that Respondent would be providing objections to the Request for Documents and Interrogatories and a response to the Request for Admissions. These April 14, 2006 Responses were received by Petitioner's counsel on Wed., April 19, 2006. (Exhibit B). However, these responses were incomplete and did not provide any documents.

II. MOTION TO COMPEL FURTHER RESPONSES AND DOCUMENTS

A. Petitioner Has Made a Good Faith Effort to Work with Respondent

In accordance with Trademark Rule 2.120(e), Petitioner submits that it has made a good faith effort to resolve with Respondent the issues presented in the motion.

Specifically, Petitioner has given Respondent ample extensions of time (3-weeks) to respond to the Requests. Respondent has provided some responses but has not provided complete responses to the Interrogatories and has not provided any documents.

Counsel for both parties had a telephone conference on April 20, 2006; however, Respondent's attorney Mr. Brandon Tesser informed Mr. Hong that their office did not yet have the documents or information to further respond. Mr. Hong further sent an April 20, 2006 letter to Mr. Tesser detailing reasons why the provided responses were inadequate or that documents were not received. (Hong Decl. and Exhibit C).

B. SARA HERRICK INFORMATION REQUESTED

The Petitioner served a second set of discovery requests after receiving Respondent's Dec. 9, 2005 responses to the first set of discovery. In this first set of responses, Respondent identified and produced a Dec. 2005 Assignment from Ms. Sara Herrick to Dr. Jeannette Martello for the mark "SKIN DEEP SKIN CARE." (See Exhibit D, pages 2-3 of Respondent's Dec. 9, 2005 Response to Petitioner's First Set of Interrogatories). As a result, Petitioner rightfully wanted to query the Respondent as to the information and documents of Ms. Herrick use, upon which Respondent would be relying in this cancellation proceeding.

C. Requests for Production of Documents

For Requests No. 17-21 and 25-31, Respondent replied that she will produce all responsive documents within her possession, custody, or control. As of April 21, 2006, Petitioner has not received any documents in response to the Feb. 22, 2006 Requests. Petitioner requests the Board to order the Respondent to provide said documents.

For Requests No. 22-24, Petitioner propounded requests for documents (invoices and receipts) that the Respondent allegedly used with the Mark for the patients that she identified and provided in Respondent's trademark applications (76581387 - "SKIN DEEP"; 76579565 - "Skin Deep Laser MEDSPA"; 76581391 - "Skin Deep Laser"). Since the Respondent provided several Feb. 2004 invoices for these particular patients in her three trademark applications as specimens, it is reasonable to ask for additional invoices and receipts for those same patients prior to and after the listed Feb. 2004 dates. These requests are relevant because the Petitioner has alleged that the Respondent's non-use of the mark "SKIN DEEP." Petitioner respectfully requests an order for the Respondent to produce the requested documents.

Brief Summary List of Documents for Req. 17-21 and 25-31:

Document Req. No. 17-18: any Credit Card or Debit Card or Bank accounts for Respondent using the mark "SKIN DEEP."

Document Req. No. 19-21: Receipts and invoices for Respondent using the mark "SKIN DEEP", "SKIN DEEP LASER," and "SKIN DEEP LASER MED SPA" for

specific time periods. Petitioner asked for a representative sample such as 3 invoices per month.

Document Req. No. 25: Sara Herrick's use of the mark "SKIN DEEP SKIN CARE" on tags, labels, etc.

Document Req. No. 26: Sara Herrick's use of the mark "SKIN DEEP SKIN CARE" on advertisements, etc.

Document Req. No. 27: Sara Herrick's use of the mark "SKIN DEEP SKIN CARE" in Interstate Commerce.

Document Req. No. 28: Sara Herrick's use of the mark "SKIN DEEP SKIN CARE" on signs.

Document Req. No. 29: any telephone book listings for Respondent using the mark "Skin Deep."

Document Req. No. 30: any telephone book listings for Sara Herrick using the mark "Skin Deep Skin Care."

Document Req. No. 31: any documents identified by Respondent in response to the Second Set of Interrogatories, not already produced.

D. Interrogatories:

For Interrogatories No. 20, 21, and 22, Respondent only provided objections, and Petitioner formally requests a further response. These questions refer to Sara Herrick's use of the mark "Skin Deep Skin Care," and specifically list the type of information.

For Interrogatory No. 23 (for promotional material by Sara Herrick), Respondent stated that they would be responding pursuant to FRCP 33(d) by producing business records and documents which contains the requested information. Petitioner has not yet received any documents in response.

For Interrogatory No. 24, Petitioner asked for a description of the Heading or Identifying Name of the Respondent on invoices used at her Pasadena, CA offices from Jan. 1, 2003 to Jan. 1, 2005. The Respondent objected to this interrogatory as being vague, ambiguous, and incomprehensible such that Petitioner is unable to provide a response.

Quite contrary to these objections, Interrogatory No. 24 is very clear as to Time (Jan. 1, 2003 to Jan. 1, 2005), Location (Respondent's Pasadena, CA Office), and Item/Document (Invoices). As a result of this clarity, Petitioner requests a further response to this interrogatory. This interrogatory seeks relevant information because the Respondent submitted invoices (from approximately Feb. 2004) for her three trademark applications, but Petitioner is questioning how and when the Respondent allegedly used each of the separate marks ("Skin Deep," "Skin Deep Laser" or "Skin Deep Laser Med Spa") on her invoices.

Accordingly, Petitioner respectfully requests that the Board order Respondent to fully respond to Petitioner's First Set of Interrogatories and First Requests for the Production of Documents as soon as the Rules allow upon the Board's order on this motion.

III. MOTION TO TEST SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST

PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES (TBMP 523) AND TO TEST
SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST (TBMP 524)

A. Petitioner Has Made a Good Faith Effort to Work with Respondent

In accordance with Trademark Rule 2.120(h), Petitioner submits that it has made a good faith effort to resolve with Respondent the issues presented in the motion.

Specifically, Petitioner has given Respondent ample extensions of time (3-weeks) to respond to the Requests. Further, Mr. Hong's April 20, 2006 letter to Respondent's counsel described why further responses were necessary for the requests for admission.

B. Requests for Admissions (RFA):

RFA No. 12-14 requests admissions regarding permanent signs showing the mark "SKIN DEEP" at Respondent's Pasadena, CA office. Respondent objected as to "permanent" being vague and ambiguous; however, Respondent was able to understand the difference between "permanent" and a sign that "could be removed relatively easily." (See Respondent's 4-14-2006 Response to Request for Admission No. 12). As a result, Petitioner requests this motion to test the sufficiency of Respondent's Response to RFA No. 13 and 14 and to order a supplemental response.

RFA No. 15, Petitioner requests a further response to regarding Respondent's use of the terms "866WOMANDR" and "DOCTORMARTELLO.COM" during her FM 97.1 KLSX "SKIN DEEP" radio show. Petitioner requests that Respondent use the common dictionary definitions for "used" and "during" in further responding to this request. Further, in response to the First Set of Document Requests, the Respondent provided several audiotapes of her radio show, and a 1-page copy of the outside of these tapes are attached as Exhibit E.

RFA No. 16-18, Petitioner requests a further response since this request is for relevant information (Non-Use of the Mark and specifically that Respondent never filed an application for a Fictitious Name Permit (see CA B&P Code Sec. 2285) for the names: “SKIN DEEP, SKIN DEEP LASER, and SKIN DEEP LASER MEDSPA”). These requests for this particular information are relevant to this case because the Petitioner is alleging that the Respondent has not used her mark(s) for “SKIN DEEP” prior to the filing date of her application or registration. Petitioner respectfully requests for an order for a further response to this RFA No. 13-18.

IV. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that the Board grant Petitioner’s motion to compel, order Respondent to provide documents and to further respond to Petitioner’s Second Set of Interrogatories and Requests for the Production of Documents, and grant Petitioner’s motion to test the sufficiency of the Respondent’s Response to the Second Set of Requests for Admissions and order additional responses as soon as the Rules allow after the Board’s ruling on the motion.

DATED: April 21, 2006

By: /david hong, reg #45704/
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680; E-Mail: david.hong@dhpatentlaw.com
Attorney File No. 2005-02-0107

Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):

1. PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES (TBMP 523) AND TO TEST SUFFICIENCY OF RESPONSE TO ADMISSION REQUEST (TBMP 524) (including Exhibits A-E);
2. DECLARATION OF DAVID HONG IN SUPPORT OF PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES;

were sent by electronic mail and first class U.S. Mail in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello,

on April 21, 2006.

By: /david hong, reg #45704/
David Hong (Reg. No. 45,704)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

DECLARATION OF DAVID HONG IN SUPPORT OF PETITIONER'S
MOTION TO COMPEL FURTHER RESPONSES

1. My name is David Hong, Esq., and I am the Attorney for the Petitioner ACM ENTERPRISES, INC. My business address is P.O. Box 2111, Santa Clarita, CA 91386-2111. I am fully competent to make this declaration, and I have personal knowledge of the facts stated in this declaration. To my knowledge, all of the facts stated in this declaration are true and correct.
2. Petitioner served Requests for Admissions, Interrogatories, and Documents on Feb. 22, 2006. These responses were due in 30 days or March 24, 2006; Petitioner granted two extensions on March 23, 2006 (2-week ext.) and also on April 6, 2006 (1-week ext.), which totaled three additional weeks to a new deadline of April 14, 2006.
3. Respondent's counsel Ms. Michelle DeCasas, Esq. telephoned me on April 14, 2006 to request a third extension to respond; Ms. DeCasas stated that due to the third party Ms. Sara Herrick's illness (cancer), Respondent was not yet able to obtain the requested information and documents from Ms. Herrick. Petitioner declined to grant another

extension of time. Ms. Decasas informed me that Respondent would be providing objections to the Request for Documents and Interrogatories and a response to the Request for Admissions.

4. I received Respondent's April 14, 2006 Responses to the Second Set of Interrogatories, Request for Admissions, and Document Requests on Wed., April 19, 2006.

5. During the April 20, 2006 telephone conference, Respondent's counsel Mr. Brandon Tesser, Esq. informed me that he did not have the information and documents necessary to fully respond and to supplement the April 14, 2006 Respondent's Responses to the Feb. 22, 2006 Interrogatories and Requests for Documents. I informed Mr. Tesser that due to the deadline cited by the Trademark Board Rules to submit any motions to compel prior to the start of the testimony period, which is currently scheduled to begin on April 22, 2006, I would have to file a motion to compel further responses no later than April 21, 2006. I further prepared and sent an April 20, 2006 e-mail and letter to Mr. Tesser outlining that I had not received any documents and that additional responses were requested, including the requests for admissions.

6. I declare under penalty of perjury (28 U.S.C. 1746) that the foregoing is true and correct.

Dated: April 21, 2006

/david hong, reg #45704/

David Hong, Esq.

Attorney for Petitioner, ACM Enterprises, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

**PETITIONER'S SECOND REQUEST FOR ADMISSIONS
TO RESPONDENT JEANNETTE MARTELLO**

Pursuant to the provisions of 37 CFR §2.120 and Rule 36 of the Federal Rules of Civil Procedure, Petitioner, ACM Enterprises, Inc., hereby serves the following request for admissions upon Respondent, Jeannette Martello, M.D. to be answered under oath by Respondent within thirty (30) days of service hereof.

DEFINITIONS AND INSTRUCTIONS

A. For purposes of these requests, unless otherwise indicated or unless the context otherwise requires:

1. The term "any" shall be construed to include the word "all" and "all" shall be construed to include the word "any" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

2. The term "between" shall be construed to include the word "among" and "among" shall be construed to include the word "between" as necessary to bring within the scope of a request

all responses which might otherwise be construed to be outside its scope.

PETITIONER'S SECOND REQ. FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO

Cancellation No. 92044697

EXHIBIT A-Petitioner MOTION TO COMPEL

Cancel No. 92044697

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3. The terms "you" or "your" or "RESPONDENT" shall refer to JEANNETTE MARTELLO, and any affiliated corporations or other business entities under its control, any predecessors or successors in interest with respect to the "SKIN DEEP" mark, any licensees or other entities that have or are intended to use the "SKIN DEEP" mark with the consent of, and any of its directors, officers, employees, agents or representatives.

4. The terms "Respondent's Mark" refers to the designation and/or trademark:

1. "SKIN DEEP," Reg. 2932593; Serial No. 76581387;
2. "SKIN DEEP LASER MEDSPA," Serial No. 76579565; and
3. "SKIN DEEP LASER" Serial No. 76581391.

5. The term "document" shall mean the original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) or draft of each writing of every kind and description (together with all worksheets, supporting documents, and other relevant material), whether inscribed by hand or mechanical, electronic, microfilm, photographic or other means (such as recording, film, tape, videotape, disc, diskette, CD-ROM disc, laser disc, or other means including data processing files and other computer readable records or programs and all other data compilations from which information can be obtained, transcribed and translated), and including, but not limited to, correspondence, letters, telegrams, telefaxes, telexes, E-Mail, messages, TWX's, telephone logs, diaries, teletype messages, memoranda, notes, reports, printouts, records of meetings, conferences or telephone or other conversations or communications, appointment calendars, surveys, studies, statistical analyses, technical analyses, test reports, search reports, tabulations, drawings, plans, blueprints, specifications, graphs, books, magazines, newspapers, publications, articles, booklets, pamphlets, circulars, bulletins, brochures,

advertising copy. contract bids, contracts, contract addenda, amendments, changes and modifications.

6. The term "Petitioner" shall refer to ACM ENTERPRISES, INC. and, where appropriate in the context. its predecessors in interest, parents, subsidiaries and/or affiliated corporations.

7. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

8. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

9. Definitions provided herein apply to any grammatical variant of the term or phrase definition.

10. Unless otherwise indicated, the geographical scope of these requests is limited to the United States of America.

REQUESTS FOR ADMISSION

Request for Admission No. 12

Respondent JEANNETTE MARTELLO did not post at least one permanent sign for the "SKIN DEEP" mark on the outside of Respondent's 701 Fremont Avenue, Pasadena, CA office from January 1, 2004 to January 1, 2006.

Request for Admission No. 13

Respondent JEANNETTE MARTELLO did not post at least one permanent sign for the “SKIN DEEP” mark on the front entrance door of Respondent’s 701 Fremont Avenue, Pasadena, CA office from January 1, 2004 to January 1, 2006.

Request for Admission No. 14

Respondent JEANNETTE MARTELLO did not post at least one permanent sign for the “SKIN DEEP” mark on the inside of Respondent’s 701 Fremont Avenue, Pasadena, CA office from January 1, 2004 to January 1, 2006.

Request for Admission No. 15

Respondent JEANNETTE MARTELLO used the terms “866WOMANDR” and “DOCTORMARTELLO.COM” during her FM 97.1 KLSX “SKIN DEEP” radio show.

Request for Admission No. 16

Respondent JEANNETTE MARTELLO never filed an application for a Fictitious Name Permit (see CA B&P Code Sec. 2285) for the name “SKIN DEEP” with the Medical Board of CA prior to March 15, 2004.

Request for Admission No. 17

Respondent JEANNETTE MARTELLO never filed an application for a Fictitious Name Permit (see CA B&P Code Sec. 2285) for the name “SKIN DEEP LASER” with the Medical Board of CA prior to March 15, 2004.

Request for Admission No. 18

Respondent JEANNETTE MARTELLO never filed an application for a Fictitious Name Permit (see CA B&P Code Sec. 2285) for the name “SKIN DEEP LASER MEDSPA” with the Medical Board of CA prior to March 15, 2004.

PETITIONER’S SECOND REQ. FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO

Cancellation No. 92044697

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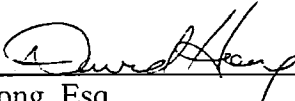
Request for Admission No. 19

Admit to the genuineness of the documents listed as Petitioner's Exhibit RFA No. 2 Pages 1-2, which are copies of the outside of one (1) VCD and seven (7) audiotapes, which were provided by the Respondent in response to the Petitioner's Document Request dated Oct. 31, 2005.

Request for Admission No. 20

Admit to the genuineness of the documents listed as Petitioner's Exhibit RFA No. 2 Pages 3-57, which were provided by the Respondent in response to the Petitioner's Document Request dated Oct. 31, 2005.

DATED: Feb. 22, 2006

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner,
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
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Attorney File No. 2005-02-0107

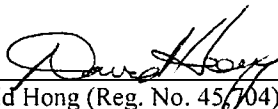
Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):
PETITIONER'S SECOND SET OF REQUEST FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO.

(Note, the Exhibits to the Second Request for Admissions were provided in PDF format on a CD-ROM in the mailed confirmation copy).

was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello,
on Feb. 22, 2006.

By: 
David Hong (Reg. No. 45,704)

PETITIONER'S SECOND REQ. FOR ADMISSIONS TO RESPONDENT JEANNETTE MARTELLO

Cancellation No. 92044697

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc.,

Petitioner,

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

**PETITIONER'S SECOND SET OF INTERROGATORIES
TO RESPONDENT JEANNETTE MARTELLO**

Pursuant to the provisions of 37 CFR §2.120 and Rule 33 of the Federal Rules of Civil Procedure, Petitioner, ACM Enterprises, Inc., hereby serves the following interrogatories upon Respondent, Jeannette Martello, M.D. to be answered under oath by Respondent within thirty (30) days of service of this request.

INSTRUCTIONS AND DEFINITION OF TERMS

A. As used herein, the term "Petitioner" refers to ACM Enterprises, Inc., DBA Skin Deep Laser Med Spa, a California Corporation, and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner.

B. The terms "Petitioner's Marks" refers to any designation and/or trademark used or intended to be used by Petitioner to identify Petitioner or the goods or services offered or

promoted by Petitioner in connection with that term, and collectively refers to the "SKIN DEEP LASER MED SPA" mark(s) owned by Petitioner, including without limitation, United States Trademark Application No. 78569772 and cited by Petitioner in its Notice of Opposition.

C. The term "Respondent" refers to JEANNETTE MARTELLO and/or her licensee(s), and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Respondent, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Respondent.

D. The terms "Respondent's Marks" refers to the designation and/or trademarks:

1. "SKIN DEEP," Reg. 2932593; Serial No. 76581387;
2. "SKIN DEEP LASER MEDSPA," Serial No. 76579565; and
3. "SKIN DEEP LASER" Serial No. 76581391.

Petitioner requests that each interrogatory be answered with respect to each of the Respondent's Marks. (See TBMP Sec. 405.03(c) Application of Limit: Multiple Marks, Etc.: "Trademark Rule 2.120(d)(1) does not provide for extra interrogatories in cases where more than one mark is pleaded and/or attacked by the plaintiff (whether in a single proceeding, or in consolidated proceedings), because in such cases, the propounding party may simply request that each interrogatory be answered with respect to each involved mark of the responding party, and the interrogatories will be counted the same as if they pertained to only one mark.")

E. Wherever in the following interrogatories Respondent is asked to identify documents, it is requested that the documents be identified by stating:

1. General type of document, i.e., letter, memorandum, report, miscellaneous, notes, etc.;

2. Date;

3. Author;

4. Organization, if any, with which author was connected;

5. Addressee or recipient;

6. Other distributees;

7. Organization, if any, with which addressee or recipient, or distributees were connected;

8. General nature of the subject matter to extent that Respondent can do so without divulging matter considered by it to be privileged;

9. Present location of such document and each copy thereof known to Respondent, including the title, index number and location, if any, of the file in which the document is kept or the file from which such document was removed, if removed for the purposes of this case, and the identity of all persons responsible for the filing or other disposition of the document.

F. Wherever in the following interrogatories Respondent is asked to identify persons, it is requested that the persons be identified by stating:

1. Their full name, home and business addresses, if known;

2. Their employment, job title or description; and

3. If employed by Respondent, their dates and regular places of employment and general duties.

G. Wherever in the following interrogatories Respondent is asked to identify companies or the response to an interrogatory would require the identification of a company, it is requested that the company be identified by stating:

1. Its full corporate name;
2. A brief description of the general nature of its business;
3. Its state of incorporation;
4. The address and principal place of business; and
5. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

H. Wherever in the following interrogatories Respondent is asked to identify goods, products or services, or the marking used in combination with the goods or services, it is requested that the same be identified by stating the catalog, stock, model or the like number or designation, the trademark, name, type, grade, design element, or stylized appearance of the mark, and any other designation customarily used by the party concerned to designate such goods, products or services, or the like, and to distinguish it from others made by the same or a different producer.

I. Should Respondent deem to be privileged any document concerning information which is requested by any of the following interrogatories, Respondent shall list such documents and supply information as requested in Paragraph E above concerning such documents, and additionally shall indicate that they claim privilege therefor, briefly state the nature of the document, the sender, the author, the recipient of each copy, the date,

the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Respondent associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document

J. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Respondent and further to include, without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Respondent, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

K. Each of the separate interrogatories herein is deemed to seek separate answers and responses as of the date hereof and these interrogatories shall be deemed to be continuing and any additional information relating in any way to these interrogatories and to events occurring or documents existing prior to the filing of the Opposition herein which Respondent acquires or which becomes known to Respondent up to and including the close of the rebuttal testimony period shall be furnished to Respondent within a reasonable time after such information is acquired or becomes known.

INTERROGATORIES

Interrogatory No. 19:

State the full name, address, state and/or country of incorporation, and form of business conducted by SARA HERRICK using the mark "SKIN DEEP SKIN CARE" in connection with such business or enterprise from Jan. 2001 to Jan. 2006 in California.

Response:

Interrogatory No. 20:

Regarding use of the mark "SKIN DEEP SKIN CARE" by SARA HERRICK, for each of the services identified in the trademark applications for Respondent's Marks.

(a) State the date of first use in INTERSTATE COMMERCE of SARA HERRICK of the mark "SKIN DEEP SKIN CARE;"

(b) Describe in what particular manner SARA HERRICK used the mark "SKIN DEEP SKIN CARE" (namely, first use) with each of the goods and/or services, including

without limitation Internet Web Site, signs, displays, promotional materials. advertising, business stationary, business cards, labels, and brochures;

(c) Identify each person who has knowledge about such first use.

Response:

Interrogatory No. 21:

Identify and describe the services and/or goods, which SARA HERRICK has sold, distributed, provided, advertised, marketed, or offered said services and/or goods with the mark "SKIN DEEP SKIN CARE" or any variation of Respondent's Marks.

Response:

Interrogatory No. 22:

With respect to SARA HERRICK's use of the mark "SKIN DEEP SKIN CARE" and/or any mark that includes the term "SKIN DEEP" and to Respondent's Dec. 9, 2005 Response to Petitioner's Previous Interrogatory No. 4.

- a. Identify the earliest date upon which Respondent intends to rely in this proceeding;
- b. Identify all documents relating to such use(s); and
- c. Identify all persons with knowledge of said use(s).

Response:

Interrogatory No. 23:

Identify each different promotional material, including without limitation, signs, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, and the like, which is known to Respondent, contains or bears the mark "SKIN DEEP SKIN CARE," Respondent's Marks or any variation thereof, and has been used or

disseminated at any time by SARA HERRICK, and the location of said promotional materials or signs.

Response:

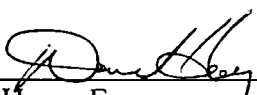
Interrogatory No. 24:

From Jan. 1, 2003 to Jan. 1, 2005, for invoices for the Respondent for services rendered to patients and clients at her Pasadena, CA office, please describe the Heading or Identifying Name of the Respondent on each invoice.

- (a) If there are differing Headings or Identifying Names, please describe how the Respondent used each Heading or Identifying Name on the invoices.
- (b) If there are differing Headings or Identifying Names, please describe the particular dates of use of each Heading or Identifying Name on the invoices.

Response:

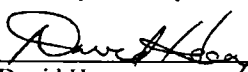
DATED: Feb. 22, 2006

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner.
ACM ENTERPRISES, INC.

David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpatentlaw.com
Attorney File No. 2005-02-0107

Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):
PETITIONER'S SECOND SET OF INTERROGATORIES TO RESPONDENT JEANNETTE MARTELLO. was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to:
Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220, Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello, on Feb. 22, 2006.


David Hong

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

ACM Enterprises, Inc.,

Petitioner.

- against -

Martello, Jeannette, M.D.

Respondent.

Cancellation No.: 92044697

Filed: July 1, 2005

**PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO**

Pursuant to the provisions of 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Petitioner ACM ENTERPRISES, INC. hereby addresses its Second Set of Requests for Production of Documents to Respondent JEANNETTE MARTELLO to be responded to and complied with fully within thirty (30) days of service thereof, and hereby requests that Respondent produce the following documents and things for inspection and copying, along with a written response to this request at the mailing address of Petitioner's counsel: David Hong, Esq., Law Office of David Hong, P.O. Box 2111, Santa Clarita, CA 91386-2111, within thirty (30) days after service of this paper and at the end of the business day (5 p.m.).

INSTRUCTIONS AND DEFINITIONS OF TERMS

A. As used herein, the term "Petitioner" refers to ACM Enterprises, Inc., DBA Skin Deep Laser Med Spa, a California Corporation, and includes all other partnerships,

PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO

corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Petitioner, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Petitioner.

B. The terms "Petitioner's Marks" refers to any designation and/or trademark used or intended to be used by Petitioner to identify Petitioner or the goods or services offered or promoted by Petitioner in connection with that term, and collectively refers to the "SKIN DEEP LASER MED SPA" mark(s) owned by Petitioner, including without limitation, United States Trademark Application No. 78569772 and cited by Petitioner in its Notice of Opposition.

C. The term "Respondent" refers to JEANNETTE MARTELLO and/or her licensee(s), and includes all other partnerships, corporations or other business entities (whether or not separate legal entities) subsidiary to, parent to, or affiliated with Respondent, including all of its or their partners, principals, officers, directors, trustees, employees, staff members, agents and representatives, including counsel for Respondent.

D. The terms "Respondent's Mark" refers to the designation and/or mark:

1. "SKIN DEEP," Reg. 2932593; Serial No. 76581387;
2. "SKIN DEEP LASER MEDSPA," Serial No. 76579565; and
3. "SKIN DEEP LASER" Serial No. 76581391.

Petitioner requests that each request for production be answered with respect to each of the above listed involved marks of the Respondent.

E. Whenever the terms "documents" or "all documents" are used herein, these terms are meant to include all documents available to Respondent and further to include,

PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO

without limitation, any written, recorded, graphic, or printed matter, in whatever form, whether printed and/or produced by hand or any other process, specifically including (1) all originals, copies or drafts, and (2) originals, copies or drafts on which appear any notes or writings placed thereon after the document was first printed, typed, recorded, or made into graphic matter, however produced or reproduced, in the actual or constructive possession of Respondent, including, without limitation, any letters, telegrams, memoranda, writings, circulars, monographs, bulletins, manuals, speeches, audio and video tapes, drawings, blueprints, recordings, computer disks or tapes, computer electronic or optical memory devices in readable form, computer printouts, computer electronic messages, notes, correspondence, communications of any nature, summaries of records of conversations or conferences, information which can be retrieved by any process, test and/or analysis, reports and data sheets, specifications, sketches, minutes or reports and/or summaries or interviews, reports and/or summaries of investigations, opinions or reports of consultants, agreements and contracts, brochures, pamphlets, advertisements, letters to the trade, and including any tangible things within the scope of Rule 34(a)(1), Federal Rules of Civil Procedure.

Any document bearing on any sheet or side thereof any marks, not a part of the original text or any reproduction thereof is to be considered a separate document for purposes of responding to the following specific document requests.

In the event Respondent wishes to assert either attorney-client privilege or work-product exclusion, or both, as to any document for which production is requested by any of the following specific document requests, then as to each document subject to such

assertion, Respondent is requested to provide such identification to include: the nature of

PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO

the document, the sender, the author, the recipient, the recipient of each copy, the date, the name of each person to whom the original or any copy was circulated, the names appearing on any circulation list of Respondent associated with such document, a summary statement of the subject matter(s) of such document in sufficient detail to permit the Trademark Trial and Appeal Board to conduct an analysis to reach a determination of any claim of privilege or exclusion and separate indication of the basis for assertion of privilege or the like for each such document.

F. Over and above the requirements of Rule 26(e) of the Federal Rules of Civil Procedure to supplement responses, it is requested that these discovery requests be treated as continuing. If Respondent becomes aware of any supplemental information or documents relating to these discovery requests and which were not included in the initial responses hereto, Respondent is requested to furnish said additional information or documents to the attorneys for Respondent as soon as possible.

REQUESTS FOR PRODUCTION

Request No. 17: From April 20, 2002 to Jan. 1, 2006, provide all documentary evidence for creating any Credit Card or Debit Card accounts using the Respondent's Marks, including the mark "SKIN DEEP," to receive payment from customers for services rendered by the Respondent.

Response:

Request No. 18: From April 20, 2002 to Jan. 1, 2006, provide all documentary evidence for creating any Bank Accounts using the Respondent's Marks, including the mark

“SKIN DEEP,” to receive payment from customers for services rendered by the Respondent.

Response:

Request No. 19: From April 2002 to Jan. 2006, please provide copies of receipts or invoices of services or products rendered by the Respondent, which show use of the mark “SKIN DEEP.” Please note that a reasonable and representative sample of at least three (3) invoices per month is requested; Petitioner also requests the last name of any customers be redacted for maintaining the customers’ privacy.

Response:

Request No. 20: From February 2002 to Jan. 2005, please provide copies of receipts or invoices of services or products rendered by the Respondent, which show use of the mark “SKIN DEEP LASER.” Please note that a reasonable and representative sample of at least three (3) invoices per month is requested; Petitioner also requests the last name of any customers be redacted for maintaining the customers’ privacy.

Response:

Request No. 21: From February 2002 to Jan. 2005, please provide copies of receipts or invoices of services or products rendered by the Respondent, which show use of the mark “SKIN DEEP LASER MEDSPA.” Please note that a reasonable and representative sample of at least three (3) invoices per month is requested; Petitioner also requests the last name of any customers be redacted for maintaining the customers’ privacy.

PETITIONER’S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT JEANNETTE MARTELLO

Response:

Request No. 22: Regarding U.S. Application No. 76581387, from Oct. 2003 to March 2004, for Respondent's customer CHRISTINE BURGS, please provide:

a. Copies of receipts or invoices of services or products rendered by the Respondent which show use of the mark "SKIN DEEP." Please note that a reasonable and representative sample of at least two (2) invoices per month is requested.

b. Copies of the form of payment for this patient for the receipt or invoice produced, including but not limited to credit card or debit card statements or check receipts.

Response:

Request No. 23: Regarding U.S. Application No. 76579656, from Oct. 2003 to March 2004, for Respondent's customers PATRICIA PHILLIPS, LINDA PALAZUELOS, and ANNETTE PALAZUELOS. please provide:

a. Copies of receipts or invoices of services or products rendered by the Respondent which show use of the mark "SKIN DEEP LASER MEDSPA." Please note that a reasonable and representative sample of at least two (2) invoices per month for each patient is requested.

b. Copies of the form of payment for this patient for the receipt or invoice produced, including but not limited to credit card or debit card statements or check receipts.

Response:

Request No. 24: Regarding U.S. Application No. 76581391, from Oct. 2003 to March 2004, for Respondent's customer CHRISTINE BURGS, please provide:

a. Copies of receipts or invoices of services or products rendered by the Respondent which show use of the mark "SKIN DEEP LASER." Please note that a reasonable and representative sample of at least two (2) invoices per month is requested.

b. Copies of the form of payment for this patient for the receipt or invoice produced, including but not limited to credit card or debit card statements or check receipts.

Response:

Request No. 25: Samples of each and every tag, label, packaging, promotional material, catalog, stationery, business card, stamps, decals, containers, and other documents showing the mark "SKIN DEEP SKIN CARE" for SARA HERRICK.

Response:

Request No. 26: All documents relating to the advertisement and promotion of the "SKIN DEEP SKIN CARE" for SARA HERRICK, including without limitation, brochures, catalogues, circulars, leaflets, direct mail pieces, newspaper and magazine advertisements, commercials, telephone book advertisements, price lists, trade association listings, annual reports, name plates, Internet Web Sites and other promotional material.

Response:

Request No. 27: All documents and material which Respondent intends to introduce as evidence in this Proceeding regarding SARA HERRICK's INTERSTATE COMMERCE use of the mark "SKIN DEEP SKIN CARE."

Response:

Request No. 28: Any documents regarding any signs or signage or point of sale displays that SARA HERRICK is or has used with the mark "SKIN DEEP SKIN CARE."

Response:

Request No. 29: Produce all documents regarding any Telephone Book Listing, including but not limited to copies of listing or applications for listing in White or Yellow Pages, printed or Internet based databases, for the Respondent using the mark "SKIN DEEP."

Response:

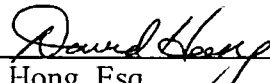
Request No. 30: Produce all documents regarding any Telephone Book Listing, including but not limited to listing or applications for listing for White or Yellow Pages, printed or Internet based database, for SARA HERRICK using the mark "SKIN DEEP SKIN CARE."

Response:

Request No. 31: Produce all documents identified in response to Petitioner's Second Set of Interrogatories to Respondent, JEANNETTE MARTELLO not produced in response to the above requests, including without limitation, Interrogatories No. 19-24.

Response:

Dated: Feb. 22, 2006

By: 
David Hong, Esq.
(CA SBN 195795, Reg. No. 45,704)
Attorney for Petitioner.
ACM ENTERPRISES, INC.

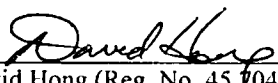
David Hong, Esq.
LAW OFFICE OF DAVID HONG
Mailing Address: P.O. Box 2111, Santa Clarita, CA 91386-2111
Tel/Fax: (866) 824-8680
E-Mail: david.hong@dhpattentlaw.com
Attorney File No. 2005-02-0107

Certificate of Service

I hereby certify that I am not a party to this case and a true and correct copy of the following document(s):
PETITIONER'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO RESPONDENT
JEANNETTE MARTELLO.

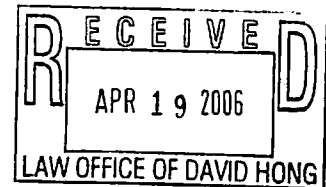
was transmitted by electronic e-mail and first class U.S. Mail in an envelope addressed to:

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
E-Mail: btesser@tesser-ruttenberg.com
Attorney for Respondent, Jeannette Martello.
on Feb. 22, 2006.

By: 
David Hong (Reg. No. 45,704)

1 Brandon M. Tesser, Esq. (SBN 168476)
Michelle E. DeCasas (SBN 228840)
2 TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
3 Los Angeles, CA 90025
Tel: (310) 207-4022
4 Fax: (310) 207-4033

5 Attorneys for Respondent
Jeannette Martello, M.D.



7
8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
9 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

11 ACM ENTERPRISES, INC.,
12 Petitioner,
13 vs.
14 JEANNETTE MARTELLO, M.D.,
15 Respondent.
16

) Cancellation No. 92044697
) Reg. No. 2932593
) **RESPONDENT'S RESPONSES TO**
) **PETITIONER'S SECOND REQUEST**
) **FOR PRODUCTION OF DOCUMENTS**

17
18 **Request No. 17:**

19 From April 20, 2002 to Jan. 1, 2006, provide all documentary evidence for creating any
20 Credit Card or Debit Card accounts using the Respondent's Marks, including the mark "SKIN
21 DEEP," to receive payment from customers for services rendered by the Respondent.

22 **Response:**

23 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
24 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
25 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
26 responsive documents within her possession, custody or control, if any there are.

27 **Request No. 18:**

28 EXHIBIT B-Petitioner Motion to Compel
29 From April 20, 2002 to Jan. 1, 2006, provide all documentary evidence for creating any
Cancellation No. 92044697
Page 1

1 Bank Accounts using the Respondent's Marks, including the mark "SKIN DEEP," to receive
2 payment from customers for services rendered by the Respondent.

3 **Response:**

4 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
5 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
6 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
7 responsive documents within her possession, custody or control, if any there are.

8 **Request No. 19:**

9 From April 2002 to Jan. 2006, please provide copies of receipts or invoices of services or
10 products rendered by the Respondent, which show use of the mark "SKIN DEEP." Please note
11 that a reasonable and representative sample of at least three (3) invoices per month is requested;
12 Petitioner also requests the last name of any customers be redacted for maintaining the
13 customers' privacy.

14 **Response:**

15 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
16 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
17 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
18 responsive documents within her possession, custody or control, if any there are.

19 **Request No. 20:**

20 From February 2002 to Jan. 2005, please provide copies of receipts or invoices of
21 services or products rendered by the Respondent, which show use of the mark "SKIN DEEP
22 LASER." Please note that a reasonable and representative sample of at least three (3) invoices
23 per month is requested; Petitioner also requests the last name of any customers be redacted for
24 maintaining the customers' privacy.

25 **Response:**

26 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
27 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible

28 **EVIDENCE: Without waiving, and subject to the foregoing objections, Petitioner will produce all**

Cancel No. 92044697

Page 2

responsive documents within her possession, custody or control, if any there are.

Request No. 21:

From February 2002 to Jan. 2005, please provide copies of receipts or invoices of services or products rendered by the Respondent, which show use of the mark "SKIN DEEP LASER MEDSPA." Please note that a reasonable and representative sample of at least three (3) invoices per month is requested; Petitioner also requests the last name of any customers be redacted for maintaining the customers' privacy.

Response:

Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all responsive documents within her possession, custody or control, if any there are.

Request No. 22:

Regarding U.S. Application No. 76581387, from Oct. 2003 to March 2004, for Respondent's customer CHRISTINE BURG, please provide:

- a. Copies of receipts or invoices of services or products rendered by the Respondent which show use of the mark "SKIN DEEP." Please note that a reasonable and representative sample of at least two (2) invoices per month is requested;
- b. Copies of the form of payment for this patient for the receipt or invoice produced, including but not limited to credit card or debit card statements or check receipts.

Response:

Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome and oppressive, not relevant and not reasonably calculated to lead to the discovery of admissible evidence, violates the physician/patient privilege, and calls for the production of private consumer information concerning a third party.

Request No. 23:

Regarding U.S. Application No. 76579656, from Oct. 2003 to March 2004, for

Respondent's customer PATRICIA PHELPS, LINDA PALAZUELOS, and ANNETTE

Cancel No. 92044697

Page 3

1 PALAZUELOS, please provide:

- 2 a. Copies of receipts or invoices of services or products rendered by the Respondent
3 which show use of the mark "SKIN DEEP LASER MEDSPA." Please note that a
4 reasonable and representative sample of at least two (2) invoices per month for
5 each patient is requested;
- 6 b. Copies of the form of payment for this patient for the receipt or invoice produced,
7 including but not limited to credit card or debit card statements or check receipts.

8 **Response:**

9 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
10 and oppressive, not relevant and not reasonably calculated to lead to the discovery of admissible
11 evidence, violates the physician/patient privilege, and calls for the production of private
12 consumer information concerning a third party.

13 **Request No. 24:**

14 Regarding U.S. Application No. 76581391, from Oct. 2003 to March 2004, for
15 Respondent's customer CHRISTINE BURGS, please provide:

- 16 a. Copies of receipts or invoices of services or products rendered by the Respondent
17 which show use of the mark "SKIN DEEP LASER." Please note that a reasonable
18 and representative sample of at least two (2) invoices per month is requested;
- 19 b. Copies of the form of payment for this patient for the receipt or invoice produced,
20 including but not limited to credit card or debit card statements or check receipts.

21 **Response:**

22 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
23 and oppressive, not relevant and not reasonably calculated to lead to the discovery of admissible
24 evidence, violates the physician/patient privilege, and calls for the production of private
25 consumer information concerning a third party.

26 **Request No. 25:**

27 Samples of each and every tag, label, packaging, promotional material, catalog,
28 stationery, business card, stamps, legal containers, and other documents showing the mark

EXHIBIT B-Petitioner's MOTION TO COMPEL

Cancel No. 92044697

1 "SKIN DEEP SKIN CARE" for SARA HERRICK.

2 **Response:**

3 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
4 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
5 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
6 responsive documents within her possession, custody or control, if any there are.

7 **Request No. 26:**

8 All documents relating to the advertisement and promotion of the "SKIN DEEP SKIN
9 CARE" for SARA HERRICK, including without limitation, brochures, catalogues, circulars,
10 leaflets, direct mail pieces, newspaper and magazine advertisements, commercials, telephone
11 book advertisements, price lists, trade association listings, annual reports, name plates, Internet
12 Web Sites and other promotional material.

13 **Response:**

14 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
15 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
16 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
17 responsive documents within her possession, custody or control, if any there are.

18 **Request No. 27:**

19 All documents and material which Respondent intends to introduce as evidence in this
20 Proceeding regarding SARA HERRICK's INTERSTATE COMMERCE use of the mark "SKIN
21 DEEP SKIN CARE."

22 **Response:**

23 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
24 and oppressive, not relevant and not reasonably calculated to lead to the discovery of admissible
25 evidence, and violates the work product privilege. Without waiving, and subject to the foregoing
26 objections, Petitioner will produce all responsive documents within her possession, custody or
27 control, if any there are.

28 **Request No. 28:**

EXHIBIT B-Petitioner MOTION TO COMPEL

Cancel No. 92044697

Page 5

1 Any documents regarding any signs or signage or point of sale displays that SARA
2 HERRICK is or has used with the mark "SKIN DEEP SKIN CARE."

3 **Response:**

4 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
5 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
6 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
7 responsive documents within her possession, custody or control, if any there are.

8 **Request No. 29:**

9 Produce all documents regarding any Telephone Book Listing, including but not limited
10 to copies of listing or applications for listing in White or Yellow Pages, printed or Internet based
11 databases, for the Respondent using the mark "SKIN DEEP."

12 **Response:**

13 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
14 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
15 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
16 responsive documents within her possession, custody or control, if any there are.

17 **Request No. 30:**

18 Produce all documents regarding any Telephone Book Listing, including but not limited
19 to listing or applications for listing for White or Yellow Pages, printed or Internet based database,
20 for SARA HERRICK using the mark "SKIN DEEP SKIN CARE."

21 **Response:**

22 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
23 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
24 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
25 responsive documents within her possession, custody or control, if any there are.

26 **Request No. 31:**

27 Produce all documents identified in response to Petitioner's Second Set of Interrogatories
28 to Respondent, JEANNETTE MARTELLO not produced in response to the above requests,

1 including without limitation, Interrogatories No. 19-24.


2 **Response:**

3 Objection, the request is vague, ambiguous, overbroad, incomprehensible, burdensome
4 and oppressive, not relevant, and not reasonably calculated to lead to the discovery of admissible
5 evidence. Without waiving, and subject to the foregoing objections, Petitioner will produce all
6 responsive documents within her possession, custody or control, if any there are.

7
8 Dated: April 14, 2006

TESSER & RUTTENBERG

9
10 By:



Brandon M. Tesser
Attorneys for Respondent
Jeannette Martello, M.D.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the COUNTY of LOS ANGELES, STATE of CALIFORNIA. I am
4 over the age of 18 and not a party to the within action; my business address is 12100 Wilshire
Boulevard, Suite 220, Los Angeles, California 90025.

5 On April 14, 2006, I served the foregoing document(s) described as **RESPONDENT'S**
6 **RESPONSES TO PETITIONER'S SECOND REQUEST FOR PRODUCTION OF**
7 **DOCUMENTS** in this action by placing a true copy thereof enclosed in a sealed envelope
addressed as follows:

8 David Hong, Esq.
9 Law Office of David Hong
10 P.O. Box 2111
Santa Clarita, California 91386-2111
Tel/Fax: (866) 824-8680
Attorney for Petitioner ACM Enterprises, Inc.

11 ☒ **BY MAIL:** I am readily familiar with my firm's practice for the collection and
12 processing of correspondence for mailing with the United States Postal Service.
13 In the ordinary course of business, correspondence would be deposited with the
14 United States Postal Service that same day. I placed true copies of the above-
entitled document in envelopes addressed as shown above and sealed and placed
them for collection and mailing on the date stated above, following ordinary
business practices.


15 ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to
16 the offices of the addressee(s) as marked with an ***.

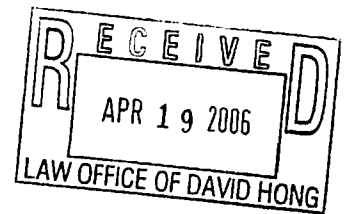
17 ☐ **BY FEDERAL EXPRESS:** I caused said envelope(s) to be sent by Federal
Express to the addressee(s) on the attached service list.

18 ☐ **BY TELECOPIER:** In addition to the above service by mail, hand delivery, or
19 Federal Express, I caused said document(s) to be transmitted by telecopier on June
24, 2005 at approximately 6:30 p.m. to the addressee(s) above.

20 ☒ (Federal) I declare that I am employed in the office of a member of the bar of this
21 court at whose direction the service was made.

22 Executed on April 14, 2006, at Los Angeles, California.

23 
24 Wendy Southart



Brandon M. Tesser, Esq. (SBN 168476)
Michelle E. DeCasas (SBN 228840)
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025
Tel: (310) 207-4022
Fax: (310) 207-4033

Attorneys for Respondent
Jeannette Martello, M.D.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ACM ENTERPRISES, INC.,) Cancellation No. 92044697
) Reg. No. 2932593
Petitioner,)
)
vs.)
)
JEANNETTE MARTELLO, M.D.,)
)
)
Respondent.)

Interrogatory No. 19:

State the full name, address, state and/or country of incorporation, and form of business conducted by SARA HERRICK using the mark "SKIN DEEP SKIN CARE" in connection with such business or enterprise from Jan. 2001 to Jan. 2006 in California.

Response:

Skin Deep Skin Care, Inc., 266 N. Grand Avenue, Monrovia, CA 91016, 626-301-9996.

Interrogatory No. 20:

Regarding use of the mark "SKIN DEEP SKIN CARE" by SARA HERRICK, for each of the services identified in the trademark applications for Respondent's Marks,

(a) State the date of first use in INTERSTATE COMMERCE of SARA HERRICK of the mark "SKIN DEEP SKIN CARE;"

- 1 (b) Describe in what particular manner SARA HERRICK used the mark "SKIN
2 DEEP SKIN CARE" (namely, first use) with each of the goods and/or services,
3 including without limitation Internet Web Site, signs, displays, promotional
4 materials, advertising, business stationary, business cards, labels, and brochures;
5 (c) Identify each person who has knowledge about such first use.

6 **Response:**

7 Objection, the interrogatory is vague, ambiguous, and overbroad.

8 **Interrogatory No. 21:**

9 Identify and describe the services and/or goods, which SARA HERRICK has sold,
10 distributed, provided, advertised, marketed, or offered said services and/or goods with the mark
11 "SKIN DEEP SKIN CARE" or any variation of Respondent's Marks.

12 **Response:**

13 Objection, the interrogatory is vague, ambiguous, and overbroad.

14 **Interrogatory No. 22:**

15 With respect to SARA HERRICK's use of the mark "SKIN DEEP SKIN CARE" and/or
16 any mark that includes the term "SKIN DEEP" and to Respondent's Dec. 9, 2005 Response to
17 Petitioner's Previous Interrogatory No. 4,

- 18 a. Identify the earliest date upon which Respondent intends to rely in this
19 proceeding;
20 b. Identify all documents relating to such use(s); and
21 c. Identify all persons with knowledge of said use(s).

22 **Response:**

23 Objection, the interrogatory is vague, ambiguous, and overbroad.

24 **Interrogatory No. 23:**

25 Identify each different promotional material, including without limitation, signs, display,
26 point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, and
27 the like, which is known to Respondent, contains or bears the mark "SKIN DEEP SKIN CARE,"

1 SARA HERRICK, and the location of said promotional materials or signs.

2 **Response:**

3 Objection, the interrogatory is vague, ambiguous, and overbroad. Subject to, and without
4 waiving the foregoing objections, pursuant to FRCP 33(d) Petitioner elects to comply with this
5 interrogatory by producing the business records and documents which contains the requested
6 information.

7 **Interrogatory No. 24:**

8 From Jan. 1, 2003 to Jan. 1, 2005, for invoices for the Respondent for services rendered
9 to patients and clients at her Pasadena, CA office, please describe the Heading or Identifying
10 Name of the Respondent on each invoice.

11 (a) If there are differing Headings or Identifying Names, please describe how the
12 Respondent used each Heading or Identifying Name on the invoices.

13 (b) If there are differing Headings or Identifying Names, please describe the particular
14 dates of use of each Heading or Identifying Name on the invoices.

15 **Response:**

16 Objection, the interrogatory is vague, ambiguous and incomprehensible such that
17 Petitioner is unable to provide a response.

18
19
20 Dated: April 14, 2006

TESSER & RUTTENBERG

21
22 By:



23 Brandon M. Tesser
24 Attorneys for Respondent
25 Jeannette Martello, M.D.
26
27
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the COUNTY of LOS ANGELES, STATE of CALIFORNIA. I am
4 over the age of 18 and not a party to the within action; my business address is 12100 Wilshire
Boulevard, Suite 220, Los Angeles, California 90025.

5 On April 14, 2006, I served the foregoing document(s) described as **RESPONDENT'S**
6 **RESPONSES TO PETITIONER'S SECOND SET OF INTERROGATORIES** in this action
by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

7 David Hong, Esq.
8 Law Office of David Hong
9 P.O. Box 2111
10 Santa Clarita, California 91386-2111
11 Tel/Fax: (866) 824-8680
12 *Attorney for Petitioner ACM Enterprises, Inc.*

13 [x] **BY MAIL:** I am readily familiar with my firm's practice for the collection and
14 processing of correspondence for mailing with the United States Postal Service.
15 In the ordinary course of business, correspondence would be deposited with the
16 United States Postal Service that same day. I placed true copies of the above-
17 entitled document in envelopes addressed as shown above and sealed and placed
18 them for collection and mailing on the date stated above, following ordinary
19 business practices.

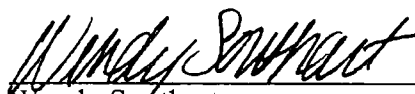
20 [] **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to
21 the offices of the addressee(s) as marked with an ***.

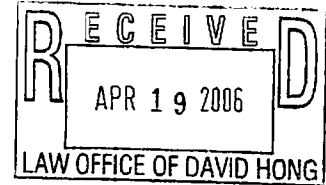
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23 Express to the addressee(s) on the attached service list.

24 [] **BY TELECOPIER:** In addition to the above service by mail, hand delivery, or
25 Federal Express, I caused said document(s) to be transmitted by telecopier on June
26 24, 2005 at approximately 6:30 p.m. to the addressee(s) above.

27 [x] (Federal) I declare that I am employed in the office of a member of the bar of this
28 court at whose direction the service was made.

Executed on April 14, 2006, at Los Angeles, California.

22 
23 Wendy Southart



Brandon M. Tesser, Esq. (SBN 168476)
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12100 Wilshire Blvd., Suite 220
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Tel: (310) 207-4022
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Attorneys for Respondent
Jeannette Martello, M.D.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ACM ENTERPRISES, INC.,

Petitioner,

vs.

JEANNETTE MARTELLO, M.D.,

Respondent.

) Cancellation No. 92044697
) Reg. No. 2932593

) **RESPONDENT'S RESPONSES TO**
) **PETITIONER'S SECOND REQUEST**
) **FOR ADMISSIONS**

Request for Admission No. 12:

Respondent JEANNETTE MARTELLO did not post at least one permanent sign for the "SKIN DEEP" mark on the outside of Respondent's 701 Fremont Avenue, Pasadena, CA office from January 1, 2004 to January 1, 2006.

Response:

Objection, vague and ambiguous as to the word "permanent." Without waiving, and subject to the foregoing objection, Respondent did post banner signs which were affixed to the exterior of her office for an extended period of time. But these signs were not permanently affixed to the building because they could be removed relatively easily.

Request for Admission No. 13:

1 "SKIN DEEP" mark on the front entrance door of Respondent's 701 Fremont Avenue, Pasadena,
2 CA office from January 1, 2004 to January 1, 2006.

3 **Response:**

4 Objection, vague, ambiguous and unintelligible as to the word "permanent" such that
5 Respondent is unable to respond to this request.

6 **Request for Admission No. 14:**

7 Respondent JEANNETTE MARTELLO did not post at least one permanent sign for the
8 "SKIN DEEP" mark on the inside of Respondent's 701 Fremont Avenue, Pasadena, CA office
9 from January 1, 2004 to January 1, 2006.

10 **Response:**

11 Objection, vague, ambiguous and unintelligible as to the word "permanent" such that
12 Respondent is unable to respond to this request.

13 **Request for Admission No. 15:**

14 Respondent JEANNETTE MARTELLO used the terms "866WOMANDR" and
15 "DOCTORMARTELLO.COM" during her FM 97.1 KLSX "SKIN DEEP" radio show.

16 **Response:**

17 Objection, vague, ambiguous and unintelligible as to the words "used" and "during"
18 within the context of this request, such that Respondent is unable to respond to this request.

19 **Request for Admission No. 16:**

20 Respondent JEANNETTE MARTELLO never filed an application for a Fictitious Name
21 Permit (see CA B&P Code Sec. 2285) for the name "SKIN DEEP" with the Medical Board of
22 CA prior to March 15, 2004.

23 **Response:**

24 Objection, the information sought is not relevant nor reasonably calculated to lead to the
25 discovery of admissible evidence.

26 **Request for Admission No. 17:**

27 Respondent JEANNETTE MARTELLO never filed an application for a Fictitious Name
28 Permit for the name "SKIN DEEP LASER" with the Medical
Cancel No. 92044697

1 Board of CA prior to March 15, 2004.

2 **Response:**

3 Objection, the information sought is not relevant nor reasonably calculated to lead to the
4 discovery of admissible evidence.

5 **Request for Admission No. 18:**

6 Respondent JEANNETTE MARTELLO never filed an application for a Fictitious Name
7 Permit (see CA B&P Code Sec. 2285) for the name "SKIN DEEP LASER MEDSPA" with the
8 Medical Board of CA prior to March 15, 2004.

9 **Response:**

10 Objection, the information sought is not relevant nor reasonably calculated to lead to the
11 discovery of admissible evidence.

12 **Request for Admission No. 19:**

13 Admit to the genuineness of the documents listed as Petitioner's Exhibit RFA No. 2 Pages
14 1-2, which are copies of the outside of one (1) VCD and seven (7) audiotapes, which were
15 provided by the Respondent in response to the Petitioner's Document Request dated Oct. 31,
16 2005.

17 **Response:**

18 Admit that Petitioner's Exhibit RFA No. 2 Pages 1-2 accurately depicts the outside of one
19 (1) VCD and seven (7) audiotapes, which were provided by the Respondent in response to the
20 Petitioner's Document Request dated Oct. 31, 2005.

21 **Request for Admission No. 20:**

22 Admit to the genuineness of the documents listed as Petitioner's Exhibit RFA No. 2 Pages
23 3-57, which were provided by the Respondent in response to the Petitioner's Document Request
24 dated Oct. 31, 2005.

25 **Response:**

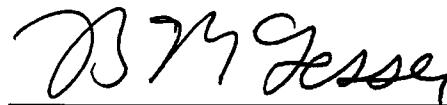
26 Objection, the Request is burdensome and oppressive in that it requires that Respondent
27 review each of the 54 documents, compare them to the actual hard copies of documents produced

1 documents. This is a very time-consuming process because Petitioner has provided the
2 documents on a CD-ROM in PDF format only, instead of providing paper copies of the
3 documents. It takes approximately 10-15 seconds for the image of each document to load from
4 the CD-ROM onto the computer screen. Without waiver of the foregoing objection, Petitioner
5 has cursorily reviewed all of the referenced documents and states that these appear to be genuine
6 copies of certain documents produced to Respondent in this proceeding.

7 Dated: April 14, 2006

TESSER & RUTTENBERG

8
9 By:



Brandon M. Tesser
Attorneys for Respondent
Jeannette Martello, M.D.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the COUNTY of LOS ANGELES, STATE of CALIFORNIA. I am
4 over the age of 18 and not a party to the within action; my business address is 12100 Wilshire
Boulevard, Suite 220, Los Angeles, California 90025.

5 On April 14, 2006, I served the foregoing document(s) described as **RESPONDENT'S**
6 **RESPONSES TO PETITIONER'S SECOND REQUEST FOR ADMISSIONS** in this action
by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

7 David Hong, Esq.
8 Law Office of David Hong
9 P.O. Box 2111
10 Santa Clarita, California 91386-2111
11 Tel/Fax: (866) 824-8680
12 *Attorney for Petitioner ACM Enterprises, Inc.*

13 [x] **BY MAIL:** I am readily familiar with my firm's practice for the collection and
14 processing of correspondence for mailing with the United States Postal Service.
15 In the ordinary course of business, correspondence would be deposited with the
16 United States Postal Service that same day. I placed true copies of the above-
17 entitled document in envelopes addressed as shown above and sealed and placed
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26 24, 2005 at approximately 6:30 p.m. to the addressee(s) above.

27 [x] (Federal) I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

Executed on April 14, 2006, at Los Angeles, California.

28 
29 Wendy Spouthart

LAW OFFICE OF DAVID HONG

David Hong, Esq.
P.O. Box 2111
Santa Clarita, CA 91386-2111

Telephone: (866) 824-8680
Facsimile: (866) 824-8680
david.hong@dhpatentlaw.com

Patent, Trademark, Copyright, Trade Secret &
Related Causes

April 20, 2006

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
12100 Wilshire Blvd., Suite 220
Los Angeles, CA 90025

VIA MAIL & E-MAIL: btesser@tesser-ruttenberg.com

Re: Client: ACM Enterprises, Inc./Skin Deep Laser Med Spa
CANCELLATION NO. 92044697
ACM Enterprises, Inc. vs. Jeannette Martello, M.D.
Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107

Dear Brandon:

This letter is regarding the April 14, 2006 Respondent's discovery responses, and a follow up to our telephone conversation today.

Petitioner served Requests for Admissions, Interrogatories, and Documents on Feb. 22, 2006. These responses were due in 30 days or March 24, 2006; Petitioner granted two extensions on March 23, 2006 (2-week ext.) and also on April 6, 2006 (1-week ext.), which totaled three additional weeks to a new deadline of April 14, 2006.

Your associate, Michelle Decasas, Esq., telephoned me on April 14, 2006 to request a third extension to respond; Ms. Decasas stated that due to the third party Ms. Sara Herrick's illness, you were not able to obtain the requested information and documents from Ms. Herrick.

Considering the already granted three weeks to respond, my client declined to grant another extension of time. Ms. Decasas informed me that your office would be providing objections to the Request for Documents and Interrogatories and a response to the Request for Admissions. I received your client's April 14, 2006 Responses on Wed., April 19, 2006.

Requests for Production of Documents

For Requests No. 17-21 and 25-31, Respondent replied that Petitioner will produce all responsive documents within her possession, custody, or control, if there are. As of today, I have not yet received any documents in response to the Feb. 22, 2006 Requests.

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107
April 20, 2006
Page 2

In response to your objections to Requests No. 22-24, we sent these questions to further obtain relevant evidence as to the receipts and invoices that Dr. Martello allegedly used with the Mark for the patients that she identified and provided in her trademark applications. In other words, it is reasonable to ask any additional invoices and receipts for those same patients prior to and after the listed Feb. 2004 dates on the specimen invoices.

Interrogatories:

For Interrogatories No. 20, 21, and 22, your client only responded with objections, and we formally request a further response.

For Interrogatory No. 23, your client responded with objections and pursuant to FRCP 33(d) by producing business records and documents which contains the requested information. We ask again for these documents, and we not received any documents as of the date of this letter.

For Interrogatory No. 24, this interrogatory is clear and specific as to:

1. Time: Jan. 1, 2003 to Jan. 1, 2005.
2. Location: Respondent's Pasadena, CA Office.
3. Item/Document: Invoices.

As a result, we request a further response to this interrogatory. This interrogatory seeks relevant information because the Respondent submitted invoices (from approximately Feb. 2004) for her trademark applications.

Requests for Admissions (RFA):

RFA No. 12-14 request information regarding permanent signs. Your client objected as to "permanent" being vague and ambiguous; however, your client was able to understand the difference between "permanent" and a sign that "could be removed relatively easily." (See Respondent's 4-14-2006 Response to Request for Admission No. 12). As a result, we request further responses to RFA No. 14 and 15.

RFA No. 15, Petitioner requests a further response to regarding use of the terms "866WOMANDR" and "DOCTORMARTELLO.COM" during her FM 97.1 KLSX "SKIN DEEP" radio show. Petitioner requests that Respondent use the common dictionary definitions for "used" and "during" in responding to this request.

RFA No. 16-18, Petitioner requests a further response since this request is for relevant information regarding use of the marks "SKIN DEEP, SKIN DEEP LASER, and SKIN DEEP LASER MEDSPA," which are relevant to this proceeding.

Deadline to File Motion to Compel Discovery is APRIL 21, 2006

Mr. Brandon Tesser, Esq.
TESSER & RUTTENBERG
Re: Petition to Cancel Registration No. 2932593 (Pet. Filed July 1, 2005)
Serial No. 76581387 (filed March 15, 2004) - Mark: "SKIN DEEP"
Attorney File No. 2005-02-0107
April 20, 2006
Page 3

TBMP 523 & 524 and 37 CFR 2.120(e) require that any motions to compel need to be filed prior to the testimony period. Here, the Petitioner's testimony period starts Sat., April 22, 2006. As a result, I must file any Motions to Compel by Friday, April 21, 2006.

If I do not file any such motions, TBMP 523.04 states, "if a party that served a request for discovery receives a response thereto which it believes to be inadequate, but fails to file a motion to test the sufficiency of the response, it may not thereafter be heard to complain about the sufficiency thereof."

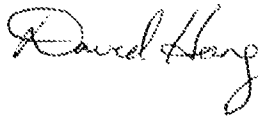
During our telephone conversation today, you informed me that you do not have the requested documents and information from your client, and I informed you that I will have to file a motion to compel to preserve my client's rights by Friday, April 21, 2006.

After the motion to compel is filed and served, and if your client provides the requested documents and information prior to your due date to respond to the motion, we have the option of taking the motion to compel off calendar.

This letter is to comply with the TBMP 523-524 and 37 CFR 121 requirements to meet and confer prior to filing any motions to compel discovery.

Very truly yours,

David Hong, Esq.



Digitally signed by DAVID HONG
DN: CN = DAVID HONG, C = US, O =
Law Office of David Hong
Reason: I am the author of this document
Location: Santa Clarita, CA
Date: 2006.04.20 15:02:10 -07'00'

Respondent's Marks,

(a) State the date of first use in intrastate commerce of the Respondent's Marks;

(b) Describe in what particular manner Respondent's Marks was first used with each of the goods and/or services, including without limitation signs, displays, promotional materials, advertising, business stationary, business cards, labels, and brochures;

(c) Identify each person who has knowledge about such first use.

Response:

"SKIN DEEP" Reg. 2932593; Serial No. 76581387

4/20/02;

"SKIN DEEP LASER MEDSPA" Serial No. 76579565

2/18/04;

"SKIN DEEP LASER" Serial No. 76581391

2/18/04

Interrogatory No. 3:

Identify and describe the services and/or goods, which the Respondent has sold, distributed, provided, advertised, marketed, or offered with Respondent's Marks or any variation of Respondent's Marks.

Response:

Medical services, plastic surgery, spa services, medi-surgical consultation services, med-spa services, skin care products (lotions, creams, sunscreens, body-washes, astringents, moisturizers, etc. – both prescription and over the counter), laser hair removal services, botox injections, collagen injections, etc.

Interrogatory No. 4:

With respect to Respondent's use of Respondent's Marks and/or any mark that includes the term "SKIN DEEP",

a. Identify the earliest date upon which Respondent intends to rely in this proceeding;

b. Identify all documents relating to such use(s); and

c. Identify all persons with knowledge of said use(s).

1 **Response:**

- 2 a. March 2001
- 3 b. Assignment Agreement between Sara Herrick, R.N. and Jeannette Martello, M.D.
- 4 c. Respondent, Sara Herrick.

5 **Interrogatory No. 5:**

6 Identify each different promotional material, including without limitation, signs, display,
7 point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, and
8 the like, which is known to Respondent, contains or bears Respondent's Marks or any variation
9 thereof, and has been used or disseminated at any time by Respondent, and the location of said
10 promotional materials or signs.

11 **Response:**

12 Signs, letterhead, labels, decals, stamps, advertisements, magazines, brochures, etc. All
13 are in Respondent's possession.

14 **Interrogatory No. 6:**

15 Identify each person, including without limitation, employees or outside agency or agent
16 retained by Respondent, who has been or now is responsible for the following activity with
17 respect to any of the goods or services actually offered or rendered under Respondent's Marks:

- 18 a. Marketing;
- 19 b. Advertising and promotion; and
- 20 c. Bookkeeping and accounting.

21 **Response:**

22 a.-b. Melinda Manos, Amber Perry, Fred Bankston, Rebecca Fuller, Marianne Guarena,
23 Marc Pfannenstein, Tracy Lima, Glen Lipton, Elaine Sense, Cinamour
24 Entertainment, Peter Kempson, Igor Kantor, Liberty Int'l Interactive, Inc., Colin
25 Macdonald, James Shafer, Lis Rubin, Jonathan Berry, Angel Parker, Linda
26 Caldera, Stacey Castor, Nicole Smith, Nadia Perez, Marissa Buck, Alexandra
27 Schinko, Shawn Blair, David Verdefo, Kellian Allen, Linda Oparnica, Irv
28 Holender, Leslie Bohm, John Street, John Martello, Alan Awar, Lingo Wang,

6/15/02 in studio
consultation for
recommendations
after massive
weight

B

Conway & Stecker
3/16/04
2004
Consult on air & interview

2002 radio promg
& advertising for

Dr. Martello's SKIN DEEP

Dr. Jeannette Martello's

SKIN DEEP (SM)

Radio Show

1/2/02

© Jeannette Martello 2002
866-WOMANUR www.doctormartello.com martello@psbell.net

Dr. Jeannette Martello's

SKIN DEEP (SM)

Radio Show

8 Min

© Jeannette Martello 2002
866-WOMANUR www.doctormartello.com martello@psbell.net

Dr. Jeannette Martello's

SKIN DEEP (SM)

Radio Show

20 Min

© Jeannette Martello 2002
866-WOMANUR www.doctormartello.com martello@psbell.net

Dr. Jeannette Martello's

What People Are Saying About SKIN DEEP (SM)

Radio Show

10 Min
Tape

© Jeannette Martello 2002
866-WOMANUR www.doctormartello.com martello@psbell.net

"9 On The Town"
10-05-2004

www.skinder
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and.com
DEEP

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age Fo